UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NORMA KIFER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:04 CV 17 SNL DDN
	)	
JO ANNE BARNHART, Commissioner of Social Security,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This action is before the court for judicial review of the final decision of defendant Commissioner of Social Security on the application of plaintiff Norma Kifer for disability benefits under Title II of the Social Security Act (the Act), 42 U.S.C. §§ 401, et seq. The action was referred to the undersigned United States Magistrate Judge for a recommended disposition under 28 U.S.C. § 636(b).

I. BACKGROUND

A. Plaintiff's Application and Medical Records

In May 2002, plaintiff, who was born in 1967, applied for disability benefits, alleging she became disabled on March 8, 2002, due to migraine headaches. (Tr. 51, 90.)

Plaintiff's employment history predominately consists of work in the social service field. She was employed from 1994 to April 17, 2000, with minimal employment gaps. Plaintiff resumed employment from December 26, 2000 until April 26, 2002, with the Missouri Division of Family Services (DFS). (Tr. 81.)

In a claimant questionnaire, plaintiff states she has migraines three or four times per week. During these migraines, plaintiff reports feeling tired, weak, slow to react, like she cannot think clearly, edgy, and nervous. Plaintiff states she has been treated for headaches, but

they persist. She takes Fioricet[1] and Phenegran[2] as needed for headache symptoms, and reports these medications make her drowsy, dizzy, weak in the hands, and have "difficulty concentrating and motivating." (Tr. 69.)

With respect to activities of daily living, plaintiff states she can dust, vacuum (self-propelled), wash bathroom sinks, make beds, do laundry, organize, and sometimes wash dishes. Plaintiff reports her husband has taken on many of the household chores and, when she is suffering from a headache, she has difficulty preparing meals, shopping, or otherwise engaging in household activities. (Tr. 70.)

Plaintiff reports she likes to swim, read, walk, camp, and garden. However, plaintiff is unable to engage in these activities as frequently as she would like, due to continued headaches. Plaintiff states she has a driver's license, but finds it difficult to drive when she has a headache. She leaves her home approximately two or three times daily to sit on the porch, visit with neighbors, drive to the gas station, or go to Rolla, Missouri, with a friend for physician appointments or to pay bills. (Tr. 71.)

Plaintiff reports she is irritable and does not like to be "bothered" by the phone or company when she has a headache. She is responsible for taking care of her pet bird and cats. It is approximately a one hundred mile journey for plaintiff to attend church, and she has not attended in two months. A few times a month plaintiff goes with her family to the recreational center. (Tr. 72.)

As early as March, 1999, plaintiff complained of back and neck pain. X-rays revealed some degenerative changes at the T7-9 levels, with all other impressions normal. In a June 6, 1999 examination, Larry B. Marti, M.D., found plaintiff's neurological examination, reflexes, sensations, and motor ability to be normal. Dr. Marti also opined that plaintiff's x-rays were essentially normal and consistent with her age, and plaintiff

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[1]"Fioricet is a pain reliever and sedative. It is used to relieve mild to moderate pain and tension headaches." Fioricet, available at http://www.migraine-relief.com/ (last visited December 9, 2004).

[2]Phenegran is indicated for a variety of conditions, including nausea, vomiting, and pain control. Physician's Desk Reference, 3419 (55th ed. 2001).

had a negative straight leg raise. Dr. Marti diagnosed plaintiff with musculoligamentous low back pain and probable over eater syndrome, and prescribed Celebrex.[3] (Tr. 112, 150, 157.)

On April 7, 2000, plaintiff was involved in a motor vehicle accident. On April 28, 2000, she underwent a CT scan of the cervical spine. The results were normal. On May 22, 2000, Dr. Marti examined plaintiff and diagnosed her with "Myofascitis,[4] traumatic, acute and subacute, secondary to the motor vehicle accident." Dr. Marti prescribed physical/occupational therapy, Vioxx,[5] and Valium.[6] (Tr. 110-11.)

Plaintiff saw Dr. Marti again on June 5, 2000. At that time, plaintiff reported less pain and discomfort, but did have the beginnings of a migraine headache. Plaintiff was prescribed Mobic,[7] and encouraged to engage in activities and exercise. (Tr. 109.)

Plaintiff was referred to Sudhir Batchu, M.D., for an October 2, 2000 examination. Dr. Batchu's examination was essentially normal. He diagnosed plaintiff with cervical strain and right upper extremity hypesthesia.[8] An MRI on October 10, 2000 was normal. On October 23, 2000, Dr. Batchu saw plaintiff for a follow-up appointment. At that time, he again assessed her as having cervical strain, with neck pain and headaches. Plaintiff underwent another MRI on November 28, 2000. This study revealed minimal diffuse bulging at the L4/L5 level. (Tr. 114-17, 147-48.)

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[3]Indicated for the treatment of pain. Celebrex, available at, http://www.celebrex.com/about_celebrex.asp (last visited December 9, 2004).

[4]Inflammation of a muscle. Stedman's Medical Dictionary, 1016, 1018 (25th ed. 1990.)

[5]For relief of the signs and symptoms of osteoarthritis. P.D.R., at 2050.

[6]Typically indicated for the management of anxiety and tension. Id. at 2814.

[7]"[I]ndicated for relief of the signs and symptoms of osteoarthritis." Id. at 981.

[8]"[D]iminished sensitivity to stimulation." Stedman's, at 747.

On September 15, 2001, plaintiff was seen at the emergency room for a migraine headache. Plaintiff reported the pain was severe and intractable. On November 1, 2001, a CT of the brain revealed normal cerebral activity and appearance. (Tr. 120, 140.)

On December 4, 2001, plaintiff underwent a neurological examination with James D. Dexter, M.D. Plaintiff's mental, cranial, motor, and sensory examinations were all essentially normal. Plaintiff was positive for fatigue, severe snoring, nocturnal dyspnea, nocturnal reflux, and pain in the shoulders and hips. Dr. Dexter opined plaintiff may have chronic headaches associated with sleep apnea. He ordered further testing. A December 13 EEG was normal, as was additional testing. Dr. Dexter prescribed a specialized diet. (Tr. 129, 131-33.)

Plaintiff underwent a sleep study on January 8, 2002. Results were normal, with no evidence of sleep apnea or abnormal movements. Plaintiff returned to Dr. Dexter on January 28, 2002. Since being on a low sugar, high protein, and low caffeine diet for one month, plaintiff showed 90% improvement in her headaches. She had two episodes of headaches that may have been connected to eating fruit. Plaintiff reported being pleased with her status. (Tr. 127-28.)

On March 22, March 26, June 3, June 13, June 28, July 18, and July 25, plaintiff complained of headaches to treatment providers. Plaintiff was given Nubain[9] and Phenegran to control the headaches. (Tr. 135, 137, 183-86.)

A June 27, 2002, physical residual functional capacity (RFC) assessment found plaintiff had no exertional, postural, manipulative, visual, or communicative limitations. Plaintiff should avoid concentrated exposure to noise, vibration, fumes, odors, dust, gases, and poor ventilation. Plaintiff's allegations were found only partially credible. (Tr. 73-80.)

On September 11, 2002, plaintiff was examined by neurologist Robert M. Woolsey, M.D. Examination revealed plaintiff was alert, coordinated,

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[9]"[O]piate pain medication that relieves moderate to severe pain." Nubain, available at http://www.drugdigest.org/DD/DVH/Uses/0,3915,474%7CNubain,00.html (last visited December 9, 2004).

with normal gait and equilibrium. She had intact cranial nerves and equal deep tendon reflexes. Dr. Woolsey determined plaintiff had two types of headaches: migraine and myogenic.[10] He prescribed Amitriptyline,[11] Amerge,[12] and Axert,[13] and suggested she continue with her current prescriptions, as needed. (Tr. 169-70.)

On October 4, October 14, October 29, November 11, and November 26, plaintiff was seen by John Pearson, D.O., and Amy Whitaker, R.N., C.S., F.N.P, respectively, for complaints of headaches. Plaintiff was given Phenegran and Nubain, and encouraged to engage in range of motion exercises. On October 30, plaintiff saw chiropractor David Moreland, D.C., C.C.S.P., for headache and neck pain. Dr. Moreland prescribed cryo therapy, and opined that plaintiff may have straightened her C-spine curve during the April 7, 2000, automobile accident. Plaintiff reported feeling better after the cryo therapy. (Tr. 153, 188-90, 192-93.)

On December 12, December 19, December 26, December 30, 2002, and on January 7, January 14, January 20, January 21, and January 24, 2003, plaintiff saw Dr. Pearson and Nurse Practitioner Whitaker, respectively, for intractable headaches. Plaintiff was again prescribed medication. (Tr. 194-95, 197-203.)

On January 13, plaintiff saw Shirley Eyman, M.D., for a psychological evaluation. Dr. Eyman found plaintiff was marginally cooperative, answering most questions, appeared irritable and reported feeling irritable and anxious. Plaintiff reported having auditory

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[10]"Originating in or starting from muscle." Stedman's, at 1016.

[11]"[T]ricyclic antidepressant, sometimes prescribed as a Migraine preventive." Amitriptyline: Headache and Migraine Drug Profiles, available at http://headaches.about.com/od/medicationprofiles/a/amitriptyline.htm (last visited December 9, 2004).

[12]"[I]ndicated for the acute treatment of migraine attacks with or without aura in adults." P.D.R., at 1350.

[13]"Axert is used to treat migraine attacks in adults. Axert is in a class of drugs called selective serotonin receptor agonists. Axert is not used for preventing migraines." Food and Drug Administration, available at http://www.fda.gov/cder/consumerinfo /druginfo/axert.htm (last visited December 9, 2004).

hallucinations, but no delusions. Plaintiff did not present as suicidal or homicidal. Her insight and judgment were fair, speech was logical, coherent, and goal-directed, with normal speed and volume. Dr. Eyman diagnosed plaintiff with "[m]ajor depression with psychotic features, panic disorder with agoraphobia, obsessive-compulsive disorder, and R/O passive-aggressive personality disorder." Plaintiff was prescribed Celexa,[14] Trazadone,[15] and Abilify.[16] (Tr. 175.)

On April 22, 2003, Karen A. MacDonald, Psy.D., completed a psychological evaluation at the Commissioner's request. Dr. MacDonald reported plaintiff was cooperative, with clear, logical and coherent speech. Plaintiff was oriented to time, place, person and purpose, and did not appear psychotic. Plaintiff had good quality of thinking and mental control, with minimal impairment in memory functioning. Plaintiff showed no marked restriction in her daily activities and could follow simple instructions. Plaintiff exhibited a limited capacity to tolerate stress, but Dr. MacDonald attributed this to choice of lifestyle. (Tr. 176-78.)

Plaintiff completed the MMPI.[17] Results suggested a "fake bad" profile, and that plaintiff was withholding information during the testing. Testing further indicated that plaintiff has severe mood swings, depression, and borderline personality disorder. However, testing showed plaintiff "overly endorsed" the obvious depression items. Testing indicated plaintiff similarly over-endorsed on the paranoid scale, suggesting she is adopting the role of victim. Testing showed plaintiff may tend to somatocize problems, and perhaps her "physical

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[14]"[I]ndicated for the treatment of depression." P.D.R., at 1258.

[15]Indicated for the treatment of depression. Trazodone, available at http://www.drugs.com/trazodone.html (last visited December 9, 2004).

[16]"[I]ndicated for the treatment of schizophrenia and acute manic and mixed episodes associated with bipolar disorder." Abilify, available at, http://www.abilify.com/abilify/home/index.jsp?BV_UseBVCookie=Yes (last visited December 9, 2004).

[17]Minnesota Multiphasic Personality Inventory.

problems may be of a somatoform nature."[18] Potential chemical-dependency was also noted during testing. (Tr. 176-78.)

Dr. MacDonald diagnosed plaintiff with (1) psychological factors affecting medical condition; (2) borderline personality disorder (rule-out chemical dependency); (3) obesity, headaches, and other somatic complaints; (4) psychosocial stressors; and (5) Global Assessment of Functioning 60, with moderate symptoms. (Tr. 176-78.)

B. Plaintiff's Hearing Testimony

The ALJ conducted a hearing on February 11, 2003, at which plaintiff was represented by counsel. Plaintiff testified she is married and lives in a home with her husband (a geologist) and their sixteen year old son. Plaintiff completed school through one year of graduate studies, earning a dual Bachelor's Degree in sociology and psychology. In her seventeen years of marriage, plaintiff reports working approximately seven years outside the home, primarily in the social service field. Plaintiff's most recent employment was one and a half years with the DFS as a social services worker in the children's services department. (Tr. 211-16.)

Plaintiff was a passenger in an automobile accident on April 7, 2000. Since that accident, plaintiff reports suffering headaches, with only an occasional headache prior to the accident. At the time of the accident, plaintiff was working at a counseling center, and she took four weeks off of work to recuperate. Plaintiff did not return to her work, because she did not feel she could continue driving in that position. A few months later, plaintiff obtained employment with DFS, in December 2000. (Tr. 224-25.)

Plaintiff testified that, prior to leaving her position with DFS in April 2002, she was in a series of one-car accidents due to slow reflexes. She also was taking Fioricet for headaches to enable her to function at work. The medication and accidents led plaintiff to believe she was no longer safe to drive. Plaintiff reported the medication

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[18]Translating psychological conflicts into physical problems. Somatoform Disorders, available at http://www.psyweb.com/Mdisord/somatd.html (last visited December 9, 2004).

caused drowsiness and made it difficult to perform her employment duties. She felt like she was only performing at twenty percent in her work at DFS. (Tr. 216-18.)

With respect to activities of daily living, plaintiff reports she awakes at approximately 8:00 a.m. She smokes a pack of cigarettes, daily. Plaintiff states she can do laundry, but cannot grocery shop because of difficulty walking in the store for a length of time, and she cannot stand at the stove or sink for more than fifteen minutes before feeling pain in her shoulders, head, and neck. Plaintiff further testified she went to an eight-day church conference in Grand Junction, Colorado in October 2002. Her husband drove the entire family to the conference. (Tr. 219-20, 226-27.)

Regarding medical treatment, plaintiff stated she is under the care of a headache expert, who diagnosed her with three types of headaches: muscle contraction, migraine, and headaches from hypoglycemia. Plaintiff states her headaches continue despite changes in her diet. Plaintiff further testified that her medications have changed constantly over the past three years, and that she underwent a neuro-psychological evaluation in early 2003. Plaintiff reported feeling depressed starting January 2001. (Tr. 218-19, 222-23, 228-29.)

Plaintiff testified she has headaches approximately 85% of the month. The headaches are debilitating, forcing plaintiff to stop what she is doing, take medication, and lie down for two hours, two times a day. Based on an average twelve hour day, plaintiff states she needs to lie down and rest approximately four to five hours. (Tr. 227-28.)

Plaintiff did not believe she could be employed in a position where she had to sit all day, because she could not sit for more than fifteen minutes without experiencing back and neck pain, and "trailers" headaches. Moreover, plaintiff testified she could not give a definite answer as to whether she could return to any past, relevant work. (Tr. 221-22, 229.)

Plaintiff testified she is not currently involved in any pending litigation related to the prior automobile accidents. However, plaintiff did net approximately $13,000 in an insurance settlement from a previous accident. Plaintiff applied for private disability insurance as part of

her state employment benefits, and was denied. (Tr. 221, 229-31.)

C. The ALJ's Decision

In an October 27, 2003 decision denying benefits, the ALJ determined plaintiff is not disabled as defined by the Social Security Act. Upon review of plaintiff's medical records, the ALJ found that plaintiff "has the following impairments that, in combination, are severe: headaches and obesity. However, she does not have a presumptively disabling impairment or combination of impairments that meets or equals in severity the clinical criteria of an impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1." (Tr. 13-14.)

The ALJ found plaintiff's allegations are not credible. He noted that plaintiff was able to work for over a year after the onset of her headaches. On her application for benefits, plaintiff stated she could engage in the following activities:

> walk for exercise, visit family and friends; do laundry; wash dishes; dust; make beds; clean sinks; do vacuuming, sweeping and mopping; prepare meals occasionally; go out to restaurants; go shopping, swimming and camping; listen to the radio; watch at least one movie daily; read novels, magazines and the bible; drive; travel to a town ten miles from her home once each week; care for cats and a bird; spend time with her children and husband at a recreation center; and occasionally attend religious services.

(Tr. 15-16.)

The ALJ further determined plaintiff's medical records do not support her claim of disability. The ALJ recognized plaintiff has a history of backache and headache complaints. However, no medical testing has shown "evidence of an impairment that could reasonably be expected to produce the extreme symptomatology she alleges." Moreover, the ALJ noted no treating or examining provider stated she was disabled, and that medical reports reflect improvement in plaintiff's condition with diet and exercise. With respect to plaintiff's mental health disorders, the ALJ noted she did not seek treatment, and a provider report suggests her testing is invalid, producing a "fake bad." The ALJ also emphasized plaintiff's poor earning history, and the lack of supporting, third-party statements attesting to the effect of headaches on her ability to sustain

employment. (Tr. 15-16.)

Based on all relevant evidence, the ALJ concluded the plaintiff has the following functional capacity:

> She is able to lift and carry twenty-five pounds frequently and fifty pounds occasionally. She is able to sit, with normal breaks, approximately six hours of an eight-hour work day. She is able to stand/walk, with normal breaks, approximately six hours of an eight-hour work day. She is unable to perform work involving concentrated exposure to noise, to vibration or to fumes, odors, dusts, gases, poor ventilation or other similar conditions. On a twelve month durational basis, the claimant has had no severe mental impairment.

(Tr. 17.)

With regard to plaintiff's past, relevant work, the ALJ determined plaintiff's previous work as a social services worker is sedentary, skilled work performed in a quiet environment, with no exposure to vibration, fumes, odors, dusts, gases, or poor ventilation. The ALJ found plaintiff was not precluded from performing her past, relevant work by any current functional limitation. (Tr. 17.)

The Appeals Council declined further review. Hence, the ALJ's decision became the final decision of the defendant Commissioner subject to judicial review. (Tr. 3-5.)

In her appeal to this court, plaintiff argues that the ALJ erred in determining she could return to past relevant work, by failing to consider the interaction between her headaches and the physical and mental demands of past work. (Doc. 8 at 19-22.)

II. DISCUSSION

A. General legal framework

The court's role on review is to determine whether the Commissioner's findings are supported by substantial evidence in the record as a whole. See Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002). "Substantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." Id.; accord Jones v. Barnhart, 335 F.3d 697, 698 (8th Cir. 2003). In determining whether the evidence is substantial, the court must consider evidence that detracts from, as well as supports,

the Commissioner's decision. See Brosnahan v. Barnhart, 336 F.3d 671, 675 (8th Cir. 2003). So long as substantial evidence supports the final decision, the court may not reverse merely because opposing substantial evidence exists in the record or because the court would have decided the case differently. See Krogmeier, 294 F.3d at 1022.

To be entitled to benefits on account of disability, a claimant must prove that she is unable to perform any substantial gainful activity due to any medically determinable physical or mental impairment, which would either result in death or which has lasted or could be expected to last for at least 12 months. See 42 U.S.C. §§ 423(a)(1)(D), (d)(1)(A), 1382c(a)(3)(A) (2004). A five-step regulatory framework governs the evaluation of disability in general. See 20 C.F.R. §§ 404.1520, 416.920 (2003); see also Bowen v. Yuckert, 482 U.S. 137, 140-41 (1987) (describing the framework); Fastner v. Barnhart, 324 F.3d 981, 983-84 (8th Cir. 2003). If the Commissioner can find that a claimant is or is not disabled at any step, a determination or decision is made and the next step is not reached. 20 C.F.R. § 404.1520(a)(4).

B. The ALJ's RFC determination

In the instant action, plaintiff argues that the ALJ incorrectly determined she could return to her past, relevant work by failing to account for the interaction of her headaches and the demands of her past work. The undersigned finds plaintiff's argument unpersuasive.

> It is the ALJ's responsibility to determine a claimant's RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant's own descriptions of his limitations. Anderson v. Shalala, 51 F.3d 777, 779 (8th Cir. 1995). Before determining a claimant's RFC, the ALJ first must evaluate the claimant's credibility. In evaluating subjective complaints, the ALJ must consider, in addition to objective medical evidence, any evidence relating to: a claimant's daily activities; duration, frequency and intensity of pain; dosage and effectiveness of medication; precipitating and aggravating factors; and functional restrictions. See Polaski v. Heckler, 739 F.2d 1320 (8th Cir. 1984). Subjective complaints may be discounted if there are inconsistencies in the evidence as a whole. Id. at 1322. A lack of work history may indicate a lack of motivation to work rather than a lack of ability. See Woolf v. Shalala, 3 F.3d 1210, 1214 (8th Cir. 1993) (claimant's credibility is lessened

> by a poor work history). The credibility of a claimant's subjective testimony is primarily for the ALJ to decide, not the courts. See Benskin v. Bowen, 830 F.2d 878, 882 (8th Cir. 1987).

Pearsall v. Massanari, 274 F.3d 1211, 1217-18 (8th Cir. 2001).

In making its RFC determination, the ALJ need only consider the limitations he finds credible, based on the record as a whole. See McGeorge v. Barnhart, 321 F.3d 766, 769 (8th Cir. 2003) ("The ALJ properly limited his RFC determination to only the impairments and limitations he found to be credible based on his evaluations of the entire record."); Chamberlain v. Shalala, 47 F.3d 1489, 1495 (8th Cir. 1995). In his opinion, the ALJ determined plaintiff's complaints of continued, intractable migraine headaches were not fully credible. Therefore, whether the ALJ appropriately determined credibility is at issue in this case.

Assessing a claimant's credibility is primarily the ALJ's function. See Holstrom v. Massanari, 270 F.3d 715, 721 (8th Cir. 2001) ("The credibility of a claimant's subjective testimony is primarily for the ALJ to decide, not the courts."); Anderson v. Barnhart, 344 F.3d 809, 815 (8th Cir. 2003) (finding a claimant's credibility is primarily a matter for the ALJ to decide). In Singh v. Apfel, the Eighth Circuit held that an ALJ who rejects subjective complaints (of pain) must make an express credibility determination explaining the reasons for discrediting the complaints. Singh, 222 F.3d 448, 452 (8th Cir. 2000).

In the instant action, the ALJ recognized and considered the analytical framework set forth in Polaski in making an adequate credibility determination supported by substantial evidence of record. The ALJ did not reject plaintiff's subjective complaints of pain simply based on a lack of medical support, contrary to Polaski, but considered a multitude of factors including plaintiff's testimony and activities of daily living, medical reports, treatment, and work history. Gwathney v. Chater, 104 F.3d 1043, 1045 (8th Cir. 1997) ("The ALJ may discount subjective complaints of physical and mental health problems that are inconsistent with medical reports, daily activities, and other such evidence.").

The record shows plaintiff is able to engage in an array of

activities of daily living, including household chores, errands, taking care of pets, and outdoor activities. See Pena v. Chater, 76 F.3d 906, 908 (8th Cir. 1996) (affirming ALJ's discount of claimant's subjective complaints of pain where claimant was able to care for one of his children on daily basis, drive car infrequently, and go grocery shopping occasionally).

With respect to her employment history, plaintiff worked as a social worker for approximately sixteen months after the headache-producing accident. Moreover, the ALJ referred to the fact that plaintiff earned well under $10,000 a year during the majority of her sixteen year work history. See Woolf v. Shalala, 3 F.3d 1210, 1214 (8th Cir. 1993) (a poor work history can lessen a claimant's credibility). Notably, plaintiff earned her highest yearly salary in 2001; the year after the automobile accident central to her claim for disability.

Regarding plaintiff's medical records, the ALJ noted the record does not reflect any provider's assessment that plaintiff is unable to be employed. Diagnostic testing and examinations have been routinely normal. Medical evidence suggests further that plaintiff had dramatic improvement in her headaches when she altered her diet, and with certain medication. With respect to her mental health, a testing evaluation indicated plaintiff may have exaggerated symptoms of depression. Moreover, an RFC determination assessment found plaintiff to be only partially credible.

Taking all of these factors into consideration, as the ALJ did in this case, there is substantial evidence on the record for the ALJ to find plaintiff is not fully credible in her allegations of disabling pain. See Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002) (stating as long as there is substantial evidence in the record, the ALJ's decision will be upheld even if substantial evidence exists adverse to the ALJ's findings); accord Dixon v. Sullivan, 905 F.2d 237, 238 (8th Cir. 1990) ("ALJs must seriously consider a claimant's testimony about pain, even when . . . subjective. But questions of credibility are for the trier of fact in the first instance. If an ALJ explicitly discredits a claimant's testimony and gives a good reason for doing so, we will normally defer to that judgment."); cf. Orrick v. Sullivan, 966 F.2d 368,

372 (8th Cir. 1992) (quoting Baker v. Secretary of Health and Human Servs., 955 F.2d 552, 555 (8th Cir. 1992) (quoting Benskin v. Bowen, 830 F.2d 878, 883 (8th Cir. 1987) ("No one, including the ALJ, disputes that plaintiff has pain . . . . The question is 'whether she is fully credible when she claims that her back hurts so much that it prevents her from engaging in her prior work.'"))).

Establishing that the ALJ determined credibility based on substantial evidence of record, the undersigned adjudges the ALJ made an appropriate RFC determination. RFC is the most a claimant can do despite her limitations. 20 C.F.R. § 404.1545(a)(1). The ALJ must assess a claimant's RFC based on all relevant, credible evidence in the record, "including the medical records, observations of treating physicians and others, and an individual's own description of [her] limitations." McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir. 2000). Some medical evidence must support the ALJ's RFC determination. Masterson v. Barnhart, 363 F.3d 731, 738 (8th Cir. 2004).

The ALJ's decision on plaintiff's RFC differs from the June 27, 2002 RFC determination. Therefore, the undersigned cannot conclude that the RFC determination was based solely on the non-examiner's assessment. Rather, substantial evidence of record supports the ALJ's determination. It is significant in the record that no treating provider has placed any physical restrictions on the plaintiff. See Young v. Apfel, 221 F.3d 1065, 1069 (8th Cir. 2000) (finding it significant, in evaluating the ALJ's RFC determination, that no physician who examined the claimant submitted a medical conclusion that she was disabled and unable to perform any type of work). Notably, plaintiff engaged in work as a social worker for sixteen months after the automobile accident while she was complaining of, and being treated for, chronic headaches.

The ALJ clearly stated plaintiff's functional limitations and relevant duties and functions of working as a social worker, and the interaction of the two. To the extent the ALJ failed to note the counseling of others as indicative of social service job duties, it does not alter the ultimate outcome of this case. McGinnis v. Chater, 74 F.3d 873, 875 (8th Cir. 1996) (noting that asserted errors in opinion-writing do not require a reversal if the error has no effect on the outcome).

The ALJ did not identify, nor does substantial evidence support, any credible limitations that would prevent plaintiff from performing the duties of her past, relevant social service work, including counseling others.

RECOMMENDATION

For the reasons set forth above, it is the recommendation of the undersigned that the decision of the Commissioner of Social Security be affirmed under Sentence 4 of 42 U.S.C. § 405(g).

The parties are advised that they have ten (10) days in which to file written objections to this Report and Recommendation. The failure to file timely written objections may waive the right to appeal issues of fact.

DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed this day, January 12, 2005.